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10/763,376	01/23/2004	Andrew Halliday	1410/67640	7589

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 01/26/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/763,376	Applicant(s) HALLIDAY ET AL.	
	Examiner Anthony Weier	Art Unit 1794	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 10/28/08 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Anthony Weier/
Primary Examiner, Art Unit 1794

Continuation of 10. Other (including any explanation in support of the above items): Although the Brief does have a section entitled "Grounds of Rejection to Be Reviewed on Appeal" with five listed rejections, it does not set forth the proper format of the rejections as set forth in the Final Office Action which consisted of only 3 art rejections. It is expected that Appellant did this to show arguing of individual groupings of claims. This should be done using subheadings within three listed prior art rejections of the "Argument" section. The "Argument" section is inappropriate as well because it breaks out groupings of different claims as the main headings. Again, setting out three sections devoted to each of the three prior art rejections in the Final Office Action with subheadings for arguments of individual claim or groupings of claims within said prior art rejections is the format that should be presented. See MPEP 1205.02. Also, it should be noted that in the "Summary of Claimed Subject Matter" at the end of the "A" paragraph, the recitation of "Preferably, either one of the first or the second beverage cartridges contains a liquid dairy-based ingredient" is flawed in that same suggests that the first or second cartridges are optional due to the use of the term "preferably". In independent claim 1, it is positively recited that the first or second beverage cartridges does contain a liquid dairy-based ingredient.